

THE VINDICATION OF JUDGE JENKINS

Prisoner in the Tower, the 29. of
Aprill, 1647.

I Was convened upon Saturday the 10. of this moneth of Aprill before a Committee of the House of Commons, wherein Master *Corbet* had the Chaire; and I was there to be examined upon some Questions then to be propounded to me; to which Questions I refused to give any other answer then that which was set downe in a paper I then delivered to the said M. *Corbet*, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for high Treason, for not acknowledging, nor obeying the power of the two Houses, by adhering to the King in this War. I deny this to be Treason for the supreme and only power, by the Lawes of this Land is in the King. If I should submit to any examination derived from your Power, which by the Negative Oath stands in opposition to the Kings Power, I should confesse the Power to be in you, and so condemne my selfe for

a Traitor, which I neither ought nor will do.

I am sworne to obey the King, and the Laws of this Land: you have not power to examine me by those Laws, by the Kings Writ, Pattent, or Commission; if you can produce either thereof, I will answer the questions you shall propound; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the Laws, which I will not do to save my life.

You your selves, all of you this Parliament, have sworne that the King is our only and supream Governour: your Protestation, your Vow and Covenant, your solemne League and Covenant, your Declarations, all of them publish to the Kingdome, that your scope is the maintenance of the Laws; those Laws are and must be derived to us, and enlivened by the only supream Governour, the Fountaine of justice, and the life of the Law, the King. The Parliaments are called by his writs; the Judges sit by his Pattents, so of all other Officers; the Cities and Towns corporate, governe by the Kings Charters; and therefore since by the Law I cannot be examined by you, without a power derived by His Majesty, I neither can, nor will, nor ought you to examine me upon any questions. But if as private Gentlemen, you shall be pleased to aske me any questions, I shall really and truly answer every such question, as you shall demand.

April 10. 1647.

David Jenkins.

This

This paper hath been mis-represented to the good people of this Citie by a Printed one, styling it my Recantation, which I owne not; and besides is in it selfe repugnant (just like these times) the Body falls out with the Head. To vindicate my selfe from that Recantation, and to publish to the world the realitie of the Paper then delivered to Mr. *Corbet*, and the matter therein contained, I have published this ensuing discourse.

No person who hath committed Treason, Murder, or Felony, hath any assurance at all for so much as one houre of life, Lands or Goods, without the Kings gracious pardon, 27 *Hen.8. Cap.24.*

The King is not virtually in the two Houses at *Westminster*, whereby they may give any assurance at all to any person, in any thing, for any such offence.

1. The House of Commons hath declared to the Kingdome in their Declaration of the 28 of *November* last to the *Scots Papers*, pag. 8. *That the King at this time is not in a condition to governe.* No person or thing can derive a vertue to other men, or things, which it selfe hath not: and therefore it is impossible that they should have a vertue from the King to governe, which they declare he hath not himselfe to give.

2. The Law of the Land is, *That no person in any 5. Elizab. Parliament hath a voice in the House of Commons, but Cap.1. that he stands a person to all intents and purposes as if he had never beene elected or returned, if before he sit in the House, he take not his Oath upon the holy Evangelists, that the Kings Majestie is the onely and supream Gover-*

now over all persons in all Causes. All the Members of the said House have taken it, and at all times as they are returned doe take it; otherwise they have no colour to intermeddle with the publicke Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, *That the King is in no condition to governe?* By the one it is sworne, He is the onely supream Governour; by the other, that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had beene, before he was seduced by ill Councill, our onely and supream Governour in all Causes, over all persons; but in the present tense, that he is our onely and supream Governour, at this present, in all Causes and over all persons. So they the same persons sweare one thing, and declare to the Kingdom the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4. The Ministers in the Pulpits doe not say, what they sweare in the House of Commons. Whoever heard sithence this unnaturall Warre, any of their Presbyters attribute that to his Majestie which they sweare? The reason is, their Oath is taken at *Westminster* amongst themselves: that which their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their onely and supream Governour in all Causes, is contrary to that the Houses doe now practise, and to all they act and maintaine. They, the two Houses forsooth, are the onely and supream Governours in default of the King, for that he hath left his great Councill, and

and will not come to them, and yet the King desires to come, but they will not suffer him, but keepe him prisoner at *Holmby*: so well doe their Actions and Oaths agree.

5. They sweare now King *Charles* is their onely and supreme Governour; but with a resolution at the time of the Oath taking, and before and after, that he shall not be onely or supreme Governour, or onely and supreme, but not any Governour at all: For there is no point of Government, but for some yeares past they have taken to themselves, and used his name onely, to abuse and deceive the people.

6. That this vertuall power is a meere fiction, their Propositions sent to *Oxford*, to *Newcastle*, to be signed by the King, doe prove it so. What needs this adoe, if they have the vertuall Power with them at *Westminster*.

7. To affirme that the Kings power (which is the vertue they talke of) is separable from his person, is high Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir *Edward Cooke*; so much magnified by this present Parliament, who in the 7 part of his Reports in *Calvins* case, fol. 11. saith thus. *In the reigne of Edward the second, the Spencers, the Father and Son, to cover the Treason hatched in their hearts, invented this damnable and damned opinion, that homage and Oath of Ligeance was more by reason of the Kings Crowne, (that is, of his politicke capacity) then by reason of the person of the King upon which opinion they inferred 3. execrable and detestable consequences. 1. If the King doe not demean himselfe by reason in the right of his Crowne, his*

lieges are bound by Oath to remove the King. 2. seeing that the King could not be reformed by suit of Law, that ought to be done per aspertee that is by force. 3. That his lieges be bound to governe in aid of him, and in default of him: All which were condemned by two Parliaments, one in the raigne of Edw. 2. called exilium Hugonis le Spencer; and the other in Anno 1. Edw. 3. cap. 2.

And that the naturall body and poliricke makes one indivisible body, and that these two bodies incorporate in one person make one body, and not divers, is resolved as the Law of England. 4. Eliz. Ploydon Com. fol. 213. by Sir Cobert Catlin, Lord Chiefe Justice of England, Sir Iamies Dier, Lord chiefe Justice of the Common Please, the Lord Sanders, Lord Chiefe Baron of the Exchequer, and by the rest of the Judges, viz. Justice Rastall, Justice Browne, Justice Corbet, Justice Weston, Baron Frevyll, Conne and Pewardrell, Sergeant Gerrard Atturney Generall; Carell Atturvy of the Dutch: Plowdon the learnedest man of that age, in the knowledge of the Law, and Customes of the Realm.

8. The Law in all ages without any controversie is and hath beene: That no Act of Parliament bindes the Subjects of this Land without the assent of the King, either for Person, Lands, Goods, or Fame. No man can shew any sillable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land. If the vertuall Power be in the Houses, there needes no assent of the Kings. The stiles of the Acts printed from 9. Hen. 3. to 1. Hen. 7. were either, *The King ordaines at his Parliament,*

9. Hen. 3.
Magna Charta.
So in every age
till this day, &
in every Kings
time, as ap-
peares by the
Acts in Print
1 part of the

Parliament, &c. or the King ordaineth by the ad-^{*Instit. Sett.*}
 vice of his Prelates and Barons, and at the humble ^{234. in fine}
 Petition of the Commons, &c. In *Hen. 7.* his time ^{where many}
 the Stile altered, and hath since continued thus, ^{of the Law-}
 It is ordained by the Kings Majesty, & the Lords ^{Bookes are}
 spirituall and temporall, and Commons in this ^{cited.}
 present Parliament assembled. So that always the ^{7 Hen. 7. 14.}
 Assent of the King giveth the life to all, as the soul ^{12. of Hen.}
 to the body; and therefore our Law-Bookes call ^{7. 10.}
 the King, the Fountaine of Justice, and the life of
 the Law.

9. Mercy as well as Justice belongs by the law ^{2 Hen. 4.}
 of the Land only to the King. This is confessed by ^{Cap. 22.}
 Mr. *Prynne*, and it is so without any question: The ^{4 pars in-}
 King can only pardon, and never more cause to ^{stit. 42.}
 have sufficient pardons then in such troublesome ^{Mr. Prin}
 times as these, and God send us pardons & peace. ^{in his Trea-}
 None can give any pardon, but the King by the ^{tise of the}
 Law of the Land: *the whole and sole power of pardo-* ^{great Scale}
ning Treasons and Felonies belongs to the King, ^{Fol. 17.}
 the words of the Law, and it is a delusion to take ^{27. Hen. 8.}
 it from any other and utterly invalid. ^{chap. 24.}
 27. H. 8.
 Cap. 24.

10. Queen Elizabeth summoned her first Par-
 liament, to be held the 23 of Jan. in the first yeare
 of her Majesties Raigne. The Lords and Com-
 mons assembled by force of the same writ, the 23
 day the Queene fell sicke and could not appear in
 her person in Parliament that day, and therefore
 prorogued it untill the 25. of the same Month of
 January. *Resolved by all the Judges of England, that* ^{3 of Eliz.}
the Parliament began not the day of the returne of the ^{Dier. 203.}
writ, viz. the 23 of January, when the Lords and
 Com-

Geminant appeared, but the 25 of the said moneth when the King came in person: which sheweth evidently that this virtuall presence is a meer deluding fiction that hath no ground in Law, reason, or sense. They have the King now a prisoner at Holsby, with guards upon him, and yet they governe by the virtuall Power of their Prisoner. These are some few of the causes & reasons which moved me to deliver that paper to M. Corbet, which I am ready to justifie with my life, and should hold it a great honour to die for the honourable and holy Lawes of the Land: That which will save this Land from destruction, is an Act of Oblivion, and His Majesties gracious generall pardon, the Souldiers their Armes, and every man his owne, and Truth and Peace established in the Land, and a favourable regard had to the satisfaction of tender Consciences.

April 29. 1647.

David Jenkins.

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